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IN THE

Supreme Court of the United States

OCTOBER TERM, 1996

BIVENS LITTLE, *et al.*,

Petitioners,

v.

MARION BARRY, JR., *et al.*,

Respondents.

On Petition for a Writ of Certiorari to the District of Columbia Court of Appeals

BRIEF AMICI CURIAE FOR CHILD WELFARE LEAGUE OF AMERICA, DISABILITY RIGHTS EDUCATION AND DEFENSE FUND, INC., NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY, AND NATIONAL SENIOR CITIZENS LAW CENTER IN SUPPORT OF PETITIONERS

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STATEMENT OF INTEREST OF AMICI CURIAE[1]

Amicus curiae Child Welfare League of America (CWLA) is a 76-year-old national association of almost 900 public and private nonprofit agencies across the country that are devoted to improving life for abused, neglected, and otherwise vulnerable children and families. Its member agencies provide a wide range of services, including child protective services, kinship care and family foster care, adoption, residential group care,

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[1] This brief is being filed with the written consent of the parties pursuant to this Court's Rule 37.3. Letters of consent are being simultaneously filed with the Clerk of the Court.

child day care, family preservation, mental health care, and programs for pregnant and parenting teenagers. CWLA recognizes the fundamental connection between poverty and child abuse. It advocates for policies and programs that strengthen and support families, and it works to preserve basic protections for this country's most vulnerable children. CWLA and others jointly filed a brief *amici curiae* in *A. St. P. C.* v. *B. C.*, 115 S. Ct. 2291 (1995).

Amicus curiae Disability Rights Education and Defense Fund, Inc. (DREDF) is a national law and policy center dedicated to securing equal citizenship for Americans with Disabilities. DREDF pursues its mission through education, advocacy and law reform efforts. In its efforts to promote full integration of citizens with disabilities into the American mainstream, DREDF has represented and assisted hundreds of people with disabilities who have been denied their rights and excluded from opportunities because of false and demeaning stereotypes, and has fought to ensure that people with disabilities have the remedies necessary to vindicate their right to be free from discrimination.[2] DREDF is nationally recognized for its expertise in the interpretation of disability civil rights laws.

Amicus curiae National Law Center on Homelessness & Poverty is a not-for-profit organization established to address issues relating to homelessness and poverty at the national level. It provides information, assistance, and counsel concerning constitutional and other legal

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[2] DREDF has filed briefs *amicus curiae* in this Court in numerous cases, including *Lane* v. *Pena*, 116 S. Ct. 2092 (1996); *Franklin* v. *Gwinnett County Public Schools*, 503 U.S. 60 (1992); *Honig* v. *Doe*, 484 U.S. 305 (1988); *School Board of Nassau County* v. *Arline*, 480 U.S. 273 (1987); *City of Cleburne* v. *Cleburne Living Center, Inc.*, 473 U.S. 432 (1985); *Atascadero State Hospital* v. *Scanlon*, 473 U.S. 234 (1985); and *Consolidated Rail Corp.* v. *Darrone*, 465 U.S. 624 (1984).

rights of poor and homeless people to groups throughout the country, including legislatures. The National Law Center on Homelessness & Poverty works to protect the rights of poor and homeless people, who frequently are without effective political voice or power, and to ensure that the laws are not selectively enforced against them. It has extensive experience with federal constitutional issues affecting homeless people. The National Law Center on Homelessness & Poverty and others jointly filed a brief *amici curiae* in *Rust* v. *Sullivan*, 500 U.S. 173 (1991).

Amicus curiae National Senior Citizens Law Center is a key resource for lawyers, advocates and national, state and local officials working on a wide range of issues affecting the elderly. It researches, analyzes and publishes timely reports and materials about aging issues, and works with a nationwide network of advocates and lawyers to provide quality advice and service to older Americans and all low income individuals. Rather than limit itself to traditional legal work, the National Senior Citizens Law Center has developed expertise in the operations of complicated public programs affecting the poor. The National Senior Citizens Law Center represented a party appearing as *amicus curiae* in *Cruzan* v. *Director, Missouri Department of Health*, 497 U.S. 261 (1990).

ARGUMENT

THE ISSUE IN THIS CASE IS VITALLY IMPORTANT TO MILLIONS OF NEEDY CITIZENS CURRENTLY RECEIVING WELFARE BENEFITS

The question presented in this case is whether a person previously determined to be qualified for welfare benefits may have those benefits terminated without notice or the opportunity for a pretermination hearing when the reason the government offers for the termination is that the benefits recipient does not satisfy newly enacted eligibility criteria. Put another way, the question is whether *Goldberg* v. *Kelly*, 397 U.S. 254 (1970), guaranteed welfare recipients a right to show that they meet changed eligibility standards before their benefits are cut off. Because "the issue is significant and likely to recur," the petition for certiorari should be granted. *Simon & Schuster, Inc.* v. *Members of the New York State Crime Victims Board*, 502 U.S. 105, 115 (1991).

The issue in this case is enormously important because it significantly affects the lives of the tens of millions of American citizens who receive welfare benefits. The significance of these benefits to those who receive them hardly needs explanation. In *Goldberg* this Court observed that "[f]or qualified recipients, welfare provides the means to obtain essential food, clothing, housing, and medical care." 397 U.S. at 264. Indeed, it provides "the very means by which to live." *Id.* Furthermore, the people who receive these benefits are our needy, our children, our disabled workers, our elderly—in other words, our must vulnerable citizens.

The significance of the legal issue is demonstrated in no small part by the sheer numbers of people who rely on public benefits in this the richest nation on earth. In 1993, an average of 14% of Americans—approximately 36 million people—participated in one or more of the major means-tested assistance programs during a given

month. Census Bureau, *Who Gets Assistance?*, Current Population Report P70-58, July 1996, at 1.[3] That same year, some type of means-tested assistance was received each month by an average of 12% of senior citizens (31 million people), 23.7% of children under age 18 (61 million people), 25.2% of people with a work disability (65 million people), and 57.3% of the poor (148 million people). *Id.* at 3-4. As organizations dedicated specifically to defending the rights and bettering the lives of such Americans, *amici* can attest to the vital importance of these benefits to those who qualify for them and, therefore, the importance of this case.

The reason why this case arose, and why similar cases can be expected to arise again and again, is the national movement to cutback welfare. In recent years, government at all levels, spurred by the strong public sentiment to "end welfare as we know it," has enacted legislation imposing new work requirements, reducing benefits, and restricting eligibility. *See, e.g.*, Peter T. Kilborn, *Welfare All Over the Map*, N.Y. Times, Dec. 8, 1996, at E3 (surveying state welfare programs and noting that "the policies of nearly all states have been headed in the same direction: tougher"). The aspect of welfare change that is relevant here—the modification of eligibility standards—has been adopted by many jurisdictions. *See* Urban Institute, Assessing the New Federalism: State General Assistance Programs 1996, Oct. 1996, at 6-2 & Table 6.1 (reporting that since 1992 eleven states, Arizona, California, Connecticut, Florida, Hawaii, Michigan, Minnesota, Ohio, Oregon, Pennsylvania, and Rhode Island, restricted or altered the eligibility criteria

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[3] The Census Bureau's figures are based on participation in the following programs: Aid to Families With Dependent Children, General Assistance, food stamps, Supplemental Security Income, Medicaid, and housing assistance.

for welfare benefits).[4] And, as in this case, states often terminate the benefits of persons previously receiving assistance on the basis of new criteria without providing pretermination hearings. *See* John Bouman, *Due Process for Welfare Recipients Subject to Changing Program Rules*, Clearinghouse Review, June 1996, at 109 (noting that "[p]rogram cutbacks of this type have been common in recent years" and discussing *Youakim* v. *McDonald*, 71 F.3d 1274 (7th Cir. 1995), *cert. denied*, 116 S. Ct. 2571 (1996), described in the petition at 17-18).

In 1996, Congress enacted sweeping welfare law. *See* Personal Responsibility and Work Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (1996). A major—indeed, historic—change effected by the law is the replacement of the Aid to Families With Dependent Children program with the funding through block grants of state assistance programs. The inevitable effect of this delegation of power to the states will be the adoption of stricter eligibility criteria and therefore more disputes such as this one. *See* Note, *Devolving Welfare Programs to the States: A Public Choice Perspective*, 109 Harv. L. Rev. 1984 (1996) (using economic theory to explain why shifting welfare from the federal government to the states will spark a "race to the bottom" in which states will cut benefit levels and restrict eligibility criteria to avoid attracting benefits seekers from neighboring states); *see also* Rebecca E. Zietlow, *Two Wrongs Don't Add Up to Rights: The Importance of Preserving Due Process in Light of Recent Welfare Reform Measures*, 45 Am. U. L. Rev. 1111, 1129 (1996) (predicting that because of the abolition of a federal entitlement to welfare "recipients are likely to see their benefits cut drastically, and the requirements for eligibility tightened").

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[4] The District of Columbia law at issue in this case took effect in 1991. *See* Pet. 3-4.

It is worth underscoring that this case raises no issue concerning either the wisdom or the lawfulness of welfare cutbacks themselves. This case does not challenge the government's prerogative to impose stricter eligibility standards on welfare recipients. Rather, the issue here is whether, once such standards have been tightened, persons who have previously qualified for benefits may be deprived of "the very means by which to live" without first being provided adequate notice and a fair chance to prove that they satisfy these new standards. Because it is not the object of any attempted change of welfare to deny benefits to persons qualified to receive them, vindication of the right petitioners assert is not antagonistic to the goal of substantive welfare change.

* * *

Goldberg v. *Kelly* has been recognized as one of the most important constitutional decisions to emanate from this Court during this century. *See* Symposium, *The Legacy of* Goldberg *v.* Kelly*: A Twenty Year Perspective*, 56 Brook. L. Rev. 729 (1990). The reason is clear. *Goldberg* involved a fundamental constitutional right—due process—in a setting where that right had enormous practical and human consequences. In this case, the Court is called upon to repudiate the erosion of *Goldberg* countenanced by the court of appeals.

CONCLUSION

For the foregoing reasons, as well as those set forth in the petition for certiorari, the petition should be granted.

Respectfully submitted,

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